



## Discretionary Civil Penalties

# Contents

- Version Control ..... 2
- 1. Background..... 3
- 2. Purpose of the civil penalty regime..... 4
- 3. Interpretation..... 5
- 4. Process to be followed by the GSC ..... 5
- 5. The criteria for determining the amount of the penalty to be imposed..... 6
- 6. Maximum penalty payable ..... 7
- 7. Discount to the financial penalty ..... 8
- 8. Written Notice ..... 8
- 9. Payment ..... 8
- 10. Publicity..... 8
- Appendix 1 Discretionary Civil Penalties – Amount Per Contravention and Level of Overall  
Maximum Penalties ..... 9

# Version Control

Version	Date Published	Comments
1	June 2024	Initial version
2		
3		
4		

# 1. Background

- 1.1. Section 22 of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 (the "Act") empowers the Gambling Supervision Commission ("the GSC") to require an operator<sup>1</sup> to pay a civil penalty when:
  - (a) an operator has contravened any provision of the Act;
  - (b) an operator has failed in any respect to comply with AML/CFT legislation; or
  - (c) an operator in purported compliance with AML/CFT legislation<sup>2</sup>, has furnished the GSC with false, inaccurate or misleading information.
- 1.2. Under the Act a penalty cannot be imposed if the operator –
  - 1.2.1. is being prosecuted for the same offence; or
  - 1.2.2. the GSC revokes or intends to revoke the operator's licence/certificate etc.
- 1.3. Under the Act the GSC may prescribe (a) additional circumstances in which a civil penalty may be imposed in lieu of criminal proceedings under this Act; or (b) further provisions about civil penalties. No such order can come into operation until it has been approved by Tynwald.
- 1.4. The Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Civil Penalties Order 2018 (the "Order"), introduced in May 2018 under the Act provides that–
  - 1.4.1. a decision by the GSC to impose a penalty is subject to a 28 day prior notice period to the operator;
  - 1.4.2. an operator can submit details to the GSC that it considers as mitigation. Such submission must be made to the GSC within 14 days of the notice being issued (see above) and must be in accordance with relevant guidance issued by the GSC; and
  - 1.4.3. the GSC must consider the operator's submission and any factors that it reasonably considers to be aggravating factors when determining the amount of the penalty to be imposed.
- 1.5. The imposition of a civil penalty is subject to the GSC's 'Decision-Making Process – Enforcement and Sanctions'.
- 1.6. Operators are reminded that section 34 of the Act provides that a person may appeal to the Gambling Appeals Tribunal against the imposition of a discretionary civil penalty or the amount of a financial penalty on the grounds that the decision of the GSC was unreasonable having regard to all the circumstances of the case.

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<sup>1</sup> Defined (along with "designated gambling operator" as meaning any or all of the following (a) the holder of a license issued under the Online Gambling Regulation Act 2001; (b) the holder of a casino licence under the Casino Act 1986; (c) the holder of a temporary premises certificate under the Casino Act 1986; (d) the holder of a Bookmaker's permit; (e) the holder of a betting office licence; (f) the holder of a racecourse licence or totaliser licence; (g) the holder of a temporary exemption

<sup>2</sup> Defined as meaning the requirements of (a) sections 7 to 11 and section 14 of the Anti-Terrorism and Crime Act 2003; (b) Part 3 of the Proceeds of Crime Act 2008; (c) Part 2, 3 and 4 of the Terrorism and Other Crime (Financial Restrictions) Act 2014; (d) any instrument of a legislative character made under any of (a) to (c) and includes, in the case of anything done outside the Island, anything that would constitute a requirement under any of (a) to (d) if done on the Island.

1.7. The table below details other documents issued by the Isle of Man Gambling Supervision Commission that are associated with this policy and can be found on our website.

Document name	Content(s)
Enforcement Strategy	<ul style="list-style-type: none"> <li>An overview of the GSC's strategy of its enforcement activities</li> </ul>
Decision-Making Process – Enforcement and Sanctions ("DMP")	<ul style="list-style-type: none"> <li>The enforcement powers subject to the DMP</li> <li>The administrative decision-making process to be followed by the GSC when considering the imposition of an enforcement power</li> </ul>
Settlement Policy	<ul style="list-style-type: none"> <li>When and in what circumstances the GSC will consider entering into settlement discussions with a subject</li> </ul>
Publication Policy	<ul style="list-style-type: none"> <li>When the GSC publishes enforcement outcomes</li> <li>Notice and timing of any publication</li> </ul>
Prohibition Policy	<ul style="list-style-type: none"> <li>When the GSC issues a prohibition</li> </ul>
Use of Appropriate Experts Policy	<ul style="list-style-type: none"> <li>When the GSC issues a direction to an operator, requiring the appointment of an appropriate professional to remedy AML/CTF deficiencies</li> </ul>
Referral to the GSC Enforcement Division	<ul style="list-style-type: none"> <li>Factors relevant to a referral to the GSC Enforcement Investigation for further investigation</li> </ul>
Making a Referral to the Police and/or the Attorney General	<ul style="list-style-type: none"> <li>In what circumstances the GSC will consider referring actual, suspected or prima facie criminal offences (including contraventions of the AML/CFT Code<sup>3</sup>).</li> </ul>

## 2. Purpose of the civil penalty regime

The principal purpose of imposing a civil penalty is to promote high standards of regulatory conduct and to demonstrate the benefits of compliant behaviour, by deterring persons who may have failed to apply an appropriate risk-based approach to Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT").

The use of civil penalties should also:

- 2.1. be in support of the GSC fulfilling its regulatory objectives;
- 2.2. change the behaviour of the operator;
- 2.3. eliminate any financial gain or benefit from non-compliance;
- 2.4. be proportionate to the nature of the non-compliance and harm identified; and
- 2.5. deter future non-compliance by the relevant operator and other operators more generally.

<sup>3</sup> *Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019*

Any penalty imposed should be one that is effective, proportionate and dissuasive.

### 3. Interpretation

In this Guidance –

Expression	Meaning
"Accounting year"	The operator's accounting year
"AML/CFT"	Anti-Money Laundering and Countering the Financing of Terrorism
"Competent Authority"	All Isle of Man administrative and law enforcement authorities concerned with AML/CFT, including the Isle of Man Gambling Supervision Commission, the Isle of Man Financial Services Authority, the Department of Home Affairs, the Isle of Man Constabulary, the Financial Intelligence Unit, the Attorney General's Chambers and the Customs and Excise and Income Tax Divisions of the Treasury
"Contravention"	A contravention of any provision of the Code
"Revenue/Turnover"	From regulated gambling activity
"ML"	Money laundering
"Operator"	A holder of a licence under any of the Gambling Acts
"Operators Revenue"	Income derived by the operator from its gaming activities
"PF"	Proliferation financing
"Senior Management"	The directors and/or other persons who are nominated to ensure that the operator meets its legal and statutory obligations, in particular those imposed by the Code.
"TF"	Terrorist financing
"the Act"	Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018
"the Code"	The Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019
"the Commission / GSC"	The Isle of Man Gambling Supervision Commission
"the Order"	Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Civil Penalties Order 2018

### 4. Process to be followed by the GSC

#### 4.1. Assess seriousness (culpability and harm)

- 4.1.1. This will be a key factor in deciding the size of the penalty for each contravention. Consider the operator's culpability and harm caused, or which might foreseeably have been caused. Identify the appropriate range by reference to the table at Appendix 1.
- 4.1.2. Identify the 'Starting Point' based on an entity with no previous findings against it.

#### 4.2. Consider the effect of aggravating and mitigating factors

- 4.2.1. Once the Starting Point has been identified, make adjustments upwards to take account of any specific matter which aggravates the issue(s). This may include

matters not in the table at Appendix 1 but which make the contravention more serious. This should include whether the operator benefitted from the contraventions through increasing its profits or avoiding a cost.

- 4.2.2. Make an adjustment downward to take into account any matters which mitigate the seriousness of the issue(s). These may be matters not included in the table in Appendix 1.

#### **4.3. Consider the ability of the operator to pay the Civil Penalty**

- 4.3.1 The purpose of a penalty is as stated in section 2 above. A penalty should not be of a size that threatens the immediate ability of the operator to continue as a going concern. In making its determination the GSC will have regard to the last 3 years' audited financial statements (when available) as well as arrangements and commitments between the operator and any group company and beneficial owner.
- 4.3.2 It should be noted that in seeking to impose a penalty via its decision-making process, an operator is afforded the opportunity to make representations to the GSC and this may include representations about affordability, financial viability etc.
- 4.3.3 The potential impact of any such penalty should be considered by an operator as an ongoing part of its governance and risk management arrangements. If the extent of such non-compliance is such that a penalty calculated in accordance with this guidance is of such a size to threaten the solvency of an operator, it is of more likelihood that the GSC will be seeking to revoke that operator's licence rather than impose a penalty.

#### **4.4. Determine the penalty**

- 4.4.1 Having taken the steps outlined above, determine the final penalty and give reasons in relation to the final penalty figure. The value of the penalty shall be determined in a consistent manner.

#### **4.5. Multiple contraventions**

- 4.5.1 In cases where there are multiple contraventions of a similar nature, it may be appropriate to determine a single penalty amount that reflects all of the identified contraventions rather than impose separate penalties for each breach. This will apply only where the appropriate penalty can be accommodated within the stated maximum.

## **5. The criteria for determining the amount of the penalty to be imposed**

- 5.1. The Act and the Order provide the GSC with absolute discretion in imposing civil penalties.
- 5.2. The GSC recognises that its principal role as a competent authority is for the oversight of compliance with the Code and to ensure that licensed operators correctly apply, on a risk-based approach, the requirements imposed upon them by the Code.
- 5.3. The Code states that failure to comply with the requirements of the Code is an offence. The Code sets out the penalties for such offences at section 32(1)(a) thereof and includes, in respect of a fine upon summary conviction, "to a fine not exceeding level

5<sup>4</sup> on the standard scale". If convicted on information at General Gaol, the Code permits an unlimited fine to be imposed<sup>5</sup>.

- 5.4. To be clear - an offence can be committed by failure to comply with any particular paragraphs or sub-paragraphs. Such contravention can be in respect of some or all of the operator's activities and arrangements or in respect of each and every customer. It does not require the entirety of the Code to have been contravened.
- 5.5. Section 22 of the Act enables the GSC to impose a civil penalty in respect of a contravention of the Code. The imposition of a penalty will be strictly as an alternative to prosecution for that offence and, upon payment of the penalty by the operator, confers on the operator immunity from prosecution for that offence<sup>6</sup>.
- 5.6. In determining whether to impose a penalty under section 22 of the Act, the GSC shall have regard to such factors as those set out within the table in Appendix 1.
- 5.7. Penalties imposed by the GSC in other cases. When the GSC determines that, in all of the circumstances, it is reasonable, appropriate and proportionate to issue a civil penalty it will endeavour to apply this guidance consistently, following precedents established in other similar cases.

## 6. Maximum penalty payable

- 6.1. Notwithstanding that the legislation provides the GSC with absolute discretion to impose penalties of any amount, this Guidance sets out criteria that the GSC will apply in imposing discretionary penalties. This is in order to best optimise the use of a discretionary penalty regime to align with the principles of this guidance. For example, if the GSC wishes an operator to no longer operate in the regulated sector, it will utilise other powers, e.g. to suspend or revoke a licence, rather than imposing a penalty at such a level that will prevent an operator from continuing in business.
- 6.2. The GSC believes that the imposition of a penalty is best employed as a penal and deterrent tool.
- 6.3. Subject to the methodology set out in Appendix 1, and the broader principles set out by way of this guidance, the maximum penalty that the GSC will impose is £1,000,000 or another sum which shall not exceed twice the amount of the benefit derived from the contravention, where the benefit derived can be quantified.
- 6.4. The GSC will assess the value of benefit that may have been derived from the contravention as relating to the revenue/turnover received by the operator in respect of the contravention(s) during the period that such contravention(s) existed noting that the period where such contravention(s) existed may extend beyond one accounting year.
- 6.5. For the purposes of imposing a penalty in accordance with the table in Appendix 1 below, the amount will be determined by reference to the revenue/turnover accrued by an operator in the calendar quarter immediately preceding the identification of the non-compliance multiplied by 4 (to equate to a full calendar year) or the turnover disclosed in the prior years audited financial statements whichever is greater.

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<sup>4</sup> Up to £10,000 - <https://www.legislation.gov.uk/cms/?view=article&id=119:important-notice&catid=14>

<sup>5</sup> Paragraph 32(1)(b)

<sup>6</sup> Unless the penalty is unpaid by the deadline indicated in writing by the GSC.



## 7. Discount to the financial penalty

- 7.1. The GSC, in considering the quantum of a financial penalty, will pay particular attention to any timely, voluntary admissions and/or disclosure by an operator where concerns have arisen. It will invariably be in an operator's interest to be full, frank and open with the GSC. In appropriate cases, credit may be given for this in the form of a discount from any financial penalty.
- 7.2. The size of the discount that will be applied will reduce once an agreement is reached or the matter is determined in the context of the GSC's 'Decision-Making Process – Enforcement and Sanctions' as follows:

Stage	Discount
Self-reporting	Up to 50%
Prior to issuance of a draft enforcement report	Up to 30%
Prior to issuance of a final enforcement report	Up to 15%
At Stage 3 – issue of 'minded to' letter	Up to 10%
At any point beyond Stage 3	zero

## 8. Written Notice

- 8.1. As required by section 22(4) of the Act, if the GSC intends to impose a civil penalty, it will provide an operator with written notice of that decision, the amount of the civil penalty it proposes to impose and the reasons for the decision.

## 9. Payment

- 9.1. When issuing a notice requiring an operator to pay a penalty the GSC will have regard to the 28 day prior notice period required to be given under paragraph 4 of the Order.
- 9.2. Upon receipt of a notice requiring an operator to pay a penalty, the operator must pay the amount stated to the Isle of Man Government no later than 28 days immediately following the day on which it is imposed.
- 9.3. All such penalties are payable to the Isle of Man Government and form part of the General Revenue of the Isle of Man.

## 10. Publicity

- 10.1. The GSC will maintain on its website a register of all discretionary penalties issued.
- 10.2. In accordance with its Publication Policy the GSC will, unless in its consideration it is not in the public interest to do so, issue a public statement regarding the issuance of each discretionary civil penalty and the associated non-compliance and contraventions underpinning the calculation and award of the penalty.

## Appendix 1 Discretionary Civil Penalties – Amount Per Contravention and Level of Overall Maximum Penalties

*This table is only a guide and the level of the civil penalty recommended in individual cases may differ. Each case will be assessed on its own merits taking into account all of the relevant facts.*

	Minor	Moderate	Major	Critical
<b>Prior compliance history with the Code (and any predecessor Code)</b>	The operator had a fully satisfactory compliance history	No material non-compliance had previously been identified or been brought to the GSC's attention	Certain material non-compliance had previously been identified but had not caused the GSC to consider exercising any of its sanctioning powers	The operator has previously been subject to an investigation by the GSC (or another competent authority) and incurred some form of sanction or censure. The operator has made assertions to the GSC previously about its compliance with AML/CFT legislation and those assertions had not been fully adhered to
<b>Compliance with guidance</b>	The operator has had appropriate regard to the relevant guidance	The operator has not had full regard to relevant guidance	The operator has had little regard to relevant guidance	The operator has had little or no regard to relevant guidance
<b>Materiality of the contravention(s)</b>	Small number of non-systemic, low priority contraventions which were limited to a minor number of accounts, customers, transactions	Several non-systemic, medium priority contraventions and those issues were limited to a moderate number of accounts, customers, transactions	Significant failings which may be systemic and those issues affected a major number of accounts, customers, transactions	Highly significant systemic failings that affected a critical number of accounts, customers, transactions
<b>Reputational risk</b>	No risk or minimal risk to the reputation of the Isle of Man	Some risk to the reputation of the Isle of Man	Major risk to the reputation of the Isle of Man	Actual reputational damage or significant risk of reputational harm
<b>Awareness &amp; conduct</b>	Operator acknowledged contraventions straight away; operator self-reported; operator and its senior management were open and co-operative with the GSC	Operator acknowledged some but not all contraventions; operator and its senior management were open and cooperative with the GSC	Operator and its senior management failed to acknowledge the contraventions at an early stage of the GSC's enquiries, operator and its senior management were not fully open and co-operative with the GSC	Operator and/or its senior management deliberately withheld the contraventions from the GSC; operator and its senior management were not open and co-operative with the GSC
<b>Deliberate and/or reckless</b>	The contraventions were not committed deliberately or recklessly and largely resulted from human error	Weaknesses within the control environment but not deliberate or reckless	Weaknesses within the control environment were either (in full or in part) deliberate or reckless	Operator and/or senior management were aware of weaknesses and/or failed to adhere to recommended actions and/or had reckless disregard to the risks arising

<b>Remediation</b>	Adequate and effective steps taken to rectify contraventions and prevent re-occurrence	Moderate steps taken to remedy contraventions and prevent re-occurrence, but inadequate	Some steps taken to rectify the contraventions and prevent re-occurrence, but inadequate	No steps taken to rectify the contraventions
<b>Risk of ML/TF</b>	No risk or minimal risk of ML/TF or being used to facilitate ML/TF	Some risk of ML/TF or being used to facilitate ML/TF	Significant risk of ML/TF or being used to facilitate ML/TF	ML/TF suspected or evidenced
<b>Adequacy of ML/TF control functions</b>	The operator's ML/TF control functions were well resourced with the appropriate levels of skills, experience and qualifications to identify the risks associated with and relevant to its business and operating models	The operator's ML/TF control functions weren't fully resourced with the appropriate levels of skills, experience and qualifications to identify the risks associated with and relevant to its business and operating models	The operator's ML/TF control functions were poorly resourced with the appropriate levels of skills, experience and qualifications to identify the risks associated with and relevant to its business and operating models	The operator's ML/TF control functions were inadequately resourced without the appropriate levels of skills, experience and qualifications to identify the risks associated with and relevant to its business and operating models
<b>Governance</b>	All aspects of the governance and control environments (Inc. any outsourced functions) were appropriately scrutinised and overseen with professional advice obtained at appropriate junctures	Most aspects of the governance and control environments (Inc. any outsourced functions) were appropriately scrutinised and overseen with professional advice obtained at appropriate junctures	Material aspects of the governance and control environments (Inc. any outsourced functions) were not appropriately scrutinised and overseen	Critical aspects of the governance and control environments (Inc. any outsourced functions) were not appropriately scrutinised and overseen
<b>Procedures, systems and controls required by the Code</b>	There were only minor issues with the extent and completeness of the operator's control environment	There were moderate issues with the extent and completeness of the operator's control environment	There were major issues with the extent and completeness of the operator's control environment	There were critical issues with the extent and completeness of the operator's control environment

<b>Penalty per contravention</b>	<b>£250</b>	<b>£500</b>	<b>£1,000</b>	<b>£5,000</b>
<b>Maximum overall cumulative penalty (after any applicable discount)</b>	£75,000 or two times the benefit derived (where they can be reasonably ascertained), whichever is the greater	£250,000 or two times the benefit derived (where they can be reasonably ascertained), whichever is the greater	£500,000 or two times the benefit derived (where they can be reasonably ascertained), whichever is the greater	£1m or two times the benefit derived (where they can be reasonably ascertained), whichever is the greater